



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0900]

RIN 1625-AA00

Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington

AGENCY: Coast Guard, DHS.

ACTION: Final Rule

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SUMMARY: The U.S. Coast Guard is establishing a safety zone around vessels involved in Coast Guard training exercises in Hood Canal, WA. This is necessary to ensure the safety of the maritime public during these exercises, which involve fast moving surface vessels, smoke machines, pyrotechnics, and other elements which could create safety concerns for waterway users. This safety zone ensures the safety of the maritime public by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port (COTP) or a Designated Representative.

DATES: This rule is effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0900]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail ENS Nathaniel P. Clinger, Waterways Management Division, Coast Guard Sector Puget Sound, U.S. Coast Guard; telephone (206) 217-6045, e-mail

[SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard published a NPRM, Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington, on October 5, 2012. The Coast Guard received zero comments submitted via regulations.gov and received zero requests for public meeting. However, on November 4, 2012, pursuant to a request by the Port Gamble S'Klallam Tribe, the Coast Guard held a consultation meeting with

the Tribe to discuss this rule. Details of that meeting are contained in a separate document which has been placed in the docket for this rulemaking.

We also note that temporary final rules have been established and published for previous Coast Guard exercises of this type in the Hood Canal on October 28, 2011, May 08, 2012, and on September 26, 2012. No negative comments or complaints were received pertaining to these rules.

#### B. Basis and Purpose

The Coast Guard utilizes the northern part of the Hood Canal, WA to conduct training exercises. During these exercises, tactical vessels are maneuvering through the Hood Canal from the entrance of Dabob Bay to Foul Weather Bluff. These exercises include fast moving surface vessels, smoke machines, and pyrotechnics. Blank ammunition, flares and LA51 warning munitions may be used during these exercises. This safety zone is necessary to ensure the safety of the maritime public and vessels participating in these exercises. It prevents collisions between vessels in the exercise and the maritime public by keeping the maritime public a safe distance away from potentially startling or disorienting smoke, bright flashes, and loud noises.

#### C. Discussion of Comments, Changes and the Final Rule

The safety zone established by this rule prohibits any person or vessel from entering or remaining within 500 yards of any vessel involved in Coast Guard training exercises in the

northern area of Hood Canal, WA. Members of the maritime public will be able to identify participating vessels as those flying the Coast Guard Ensign. The COTP may also be assisted in the enforcement of the zone by other federal, state, or local agencies. Notification may also include but is not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

We did not receive any public comments or requests for public meetings during the comment period. However, the Coast Guard did meet with the Port Gamble S'Klallam Tribe at their request. In response to the issues raised at that meeting, the Coast Guard is increasing the notification period for enforcement of the rule from 10 days to 45 days. Additionally, in order to clarify certain aspects of the rule, the Coast Guard has added some definitions to the regulatory text.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the safety zone will be in place for a limited period of time and vessel traffic will be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the COTP, Puget Sound or a Designated Representative.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: the owners and operators of vessels intending to operate in the waters covered by the safety zone while it is in effect. This rule would not have a significant economic impact on a substantial number of small entities because the safety zone would be in place for limited periods of time and

maritime traffic would still be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the COTP, Puget Sound or a Designated Representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the

Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect



on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. However, we note that the Coast Guard did consult with the Port Gamble S'Klallam Tribe at their request during the rulemaking process, and considered their input when devising this final rule.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis

checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.1339 to read as follows:

§ 165.1339 Safety Zone; Coast Guard Exercise Area, Hood Canal, Washington

(a) Location. The following area is a safety zone: All waters encompassed within 500 yards of any vessel that is involved in a Coast Guard training exercise while such vessel is transiting Hood Canal, WA between Foul Weather Bluff and the entrance to

Dabob Bay. Vessels involved will be various sizes and can be identified as those flying the Coast Guard Ensign.

(b) Regulations. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this rule unless authorized by the Captain of the Port or a Designated Representative. See 33 CFR Part 165, Subpart C, for additional information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at (206) 217-6001.

(c) Definition. Training exercises are defined as full scale exercises that are significant in nature and involve multiple units and vessels. This safety zone will not be utilized by operations and training which is conducted daily or is routine in nature.

(d) Enforcement period. The safety zone described in paragraph (a) of this section would be enforced by the Captain of the Port only upon notice. Notice of enforcement by the Captain of the Port will be provided 45 days prior to execution of the exercise by all appropriate means, in accordance with 33 CFR 165.7(a). Such means will include publication in the FEDERAL REGISTER, and may also include Broadcast Notice to Mariners, Local Notice to Mariners, or both.

DATED: January 22, 2013 S. J. Ferguson  
Captain, U.S. Coast Guard  
Captain of the Port, Puget Sound

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